SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

S.A. NO. 168 /2005

APPELLANT

Warsali son of Inayat, aged 67 years, resident of village Dipadih,Khurd, Police Station Shankergarh, Tahsil-Kusmi, District Sarguja (Chhattisgarh)

(DEFENDENT NO.1)

P.R. No. 856/05
Presented by Shri A.K. Yadav
dated 24.03.05

VERSUS

RESPONDENTS (1) Mohmad Rojani Widow of Ali Mohmad, aged about 62 years, resident of village Depadih,Khurd, Police Station Shankergarh, Tahsil Kusmi, District-Sarguja (Chhattisgarh)

(PLAINTIFF)

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(2) State of Chhattisgarh through the Collector Sarguja Ambikapur.

(PERFORMA DEFENDENT)

SECOND CIVIL APPEAL UNDER SECTION 100 OF CIVIL PRODEDURE CODE 1908

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

आदेश पत्रक S.A.No. 168/05

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20/01/2006

Shri J.S. Baraik, Counsel for the appellant.

None for the respondent No.1.

Shri Akhil Agrawal, Panel Lawyer for the respondent No.2/State.

Heard on admission and on M.C.P.No.524/2005.

Respondent No.1 filed a suit for declaration of her title partition and after partition for possession of her share averring that her father Inayat Ali who is dead was owner of the suit properties. Appellant did not dispute that Inayat Ali was the owner of the suit properties, but refuted the claim of respondent No.1 on the ground that she is not the real sister of appellant and daughter of Inayat Ali. Appellant further raised question regardidng non-joinder of parties stating that the appellant at the time of marriage has allotted seven acres of land to his wife towards "Meher" out of the suit land and Inayat Ali during his life time transferred two acres of land to Sahabuddin, the son of respondent No.1. After the death of Inayat Ali his name was recorded in revenue records and that has not been challenged by respondent No.1 within time.

Both the Courts below after meticulous appreciation of evidence have held that the appellant and respondent No.1 are real brother and sister. The suit property is self-acquired property of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

आदेश पत्रक

मामला क्रमांक SA 168/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of their father Inayat Ali. Allotting any land by appellant to his wife towards Meher does not necessitate to implead her in the suit and the suit is within time. Therefore, the suit for declaration, partition and separate possession has been decreed by the trial Court and confirmed by the first Appellate Court.

Appellant in the memo of appeal has formulated the following substantial questions of law:

> *"(A) Whether the right to inherit the suit land to the extent of 2/6 share accrues to the plaintiff respondent just after the death of Inayat Ali?*
>
> *(B) Whether the property received in lieu of den-Meher from her husband become the personal property of a Muslim woman. If so, seven acres of the land out of the suit lands becomes the personal property of Sarman Bi the wife of the appellant.*
>
> *(C) Whether in absence of Sarman Bi the wife of the appellant is necessary party to the suit and if so no valid decree could be granted in her absence.*

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(D) Whether concept of jointness in the Muslim family is permissible and if so whether joint cultivation gives arise a right to the plantiff/respondent.'?

Sarman Bi, the wife of appellant if has been allotted any land by her husband towards Meher, is not a necessary party in the suit because Inayat Ali was the owner of suit land and after his death appellant and respondent No.1 stating themselves to be son and daughter are claiming the suit land. After the death of Inayat Ali the suit has been brought for declaration of title, partition and separate possession by respondent No.1. Joint cultivation has no relevancy in the instant suit. In the instant suit, admittedly the suit property was self-acquired property of Inayat Ali. The appellant and respondent are brother and sister is a finding of fact and both the Courts below after meticulous appreciation of evidence have decided the same. Inayat Ali had died and after his death appellant as the son and respondent No.1 as the daughter are entitled for partition and possession. Recording the name of any person in revenue record does not confer any title on him and if any part of self acquired property has been alienated by its owner that cannot be challenged by any third person.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Raju	After taking into consideration all the facts and material on record and also taking into consideration the arguments advanced by counsel for the appellant, I am of the opinion that no substantial question of law involves in this appeal. Therefore, the appeal is liable to be dismissed and is accordingly dismissed. In view of the above order, M.C.P.No.524/2005 stands disposed of Sd/- V.K.Shrivastava Judge	

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